But the rule must be applied with discrimination, for the bare possession of stolen property, though recent, uncorroborated by other evidence, is sometimes fallacious and dangerous as a criterion of guilt."

In the present case, the only evidence to connect the appellant with the killing is the possession of two pieces of jewellery, the property of the deceased, and it is not certain that they were on the deceased's person on the day of his death. In our view, this did not supply sufficient evidence on which to found a conviction for murder, and we accordingly allowed the appeal and directed that the appellant should be discharged.

Appeal allowed.

ISA BIN CHE NOH & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) January 30, 1956]

[Kota Bharu — Criminal Appeal No. 102 of 1955]

Penal Code ss. 34 and 324 — Common intention.

This was an appeal against the conviction of the appellants on a charge of voluntarily causing hurt by means of an instrument used for cutting to wit a "parang", an offence punishable under section 324 of the Penal Code.

The brief facts of the case were that the complainant and another man were walking along a path at about 8 p.m. in the vicinity of their village. They were apprehended by the three appellants walking in single file. The evidence showed that the first appellant was some distance in front of the other two appellants. It appeared that the first appellant asked the complainant who he was and then attacked the complainant and a fight took place between them. The only evidence against the second and third appellants was that they joined in the fight for a short duration, punched the complainant and then ran away. It was alleged that in the course of the fight the first appellant struck the complainant with a "parang".

Held: the evidence in this case was insufficient to establish beyond reasonable doubt that there was in fact any pre-arranged plan to assault the complainant with a "parang" between the three accused and therefore the convictions of the second and third appellants must be set aside.

Case referred to:—

(1) *Chin Hon & Ors. v. Public Prosecutor* (1948) M.L.J. 193.

MAGISTRATE'S CRIMINAL APPEAL.

Lee Saik Kee for the appellants.

Syed Hamzah bin Tahir (Federal Counsel) for the respondent.

Rigby J. (delivering oral judgment) : — The three appellants in this case were jointly charged with voluntarily causing hurt to one Syed Abdullah bin Syed Ahmad by the use of an instrument used for cutting, to wit, a "parang", contrary to section 324 of the Penal Code.

The case for the prosecution was that the "parang" was in fact used by the first appellant but that all three appellants were jointly concerned in the commission of the offence. For the prosecution to succeed in this case it was necessary for them to establish that there was in fact a common intention on the part of all three appellants to commit the offence in fact committed. The headnote to the case of *Chin Hon & Ors. v. Public Prosecutor*[1], reads :—

"To invoke the aid of s.34 of the Penal Code successfully it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all: if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act was done by him alone."

In my view, the evidence in this case does not establish that there was in fact a common intention on the part of the appellants to commit the offence alleged.

The brief facts of the case were that the complainant and another man were walking along a path at about 8 p.m. in the vicinity of their village. They were approached by three persons — the three appellants — walking in single file. The evidence clearly establishes that the first appellant was some distance in front of the other two appellants. It would appear from the evidence that the first appellant then asked the complainant who he was and then allegedly attacked the complainant and a fight took place between them. The only evidence against the second and third appellants was that they joined in the fight for a short duration, punched the complainant and then ran away. It was alleged that in the course of the fight the first appellant struck the complainant with a "parang". As I have said, for the prosecution to succeed in the case against the second and third appellants, it was necessary to establish that there was a pre-arranged plan between all three appellants, not merely to assault the complainant but to assault him with a "parang" or other cutting instrument. In my view the evidence in this case was insufficient to establish beyond reasonable doubt that there was in fact any such common intention between the three accused. The appeal as regards the second and third appellants is accordingly allowed, and the conviction and sentence set aside.

In so far as the first appellant is concerned, whilst I fully appreciate the seriousness of assaults which involve the use of dangerous weapons, and whilst I am fully aware of the prevalence of this type of offence in this State, on the facts of this case I am of the opinion that the sentence imposed was unduly severe. The injury in fact inflicted, fortunately, was not a serious one. The evidence given by the Doctor negatived the evidence of the prosecution witnesses that it was in fact a "parang" which was used. The Doctor, in his evidence, stated that the wound which he found, though caused by a sharp weapon, in his view, was unlikely to have been caused by a weapon such as a "parang". I therefore dismiss the appeal as regards the first appellant against his conviction, but reduce the sentence from one of twelve months' imprisonment to three months' imprisonment to run as from to-day.

Order accordingly.

Solicitors: *Pillai, Lim, Lee & Hwang.*

In re a TAX-PAYER

[A.C.J. (Spencer Wilkinson J.) February 3, 1956]

[Penang — Civil Appeal No. 4 of 1955]

Income Tax Ordinance, 1947, s. 21(3) and (5) — Commence to carry on a new trade or profession — Whether an advocate and solicitor who had been receiving a salary ceases business as an employee and commences a new trade or profession as a partner when he becomes a partner — "Employment" — Meaning of — Rule of construction.

The tax-payer in this case was practising as an advocate and solicitor in a legal firm. Up to December 31, 1953 he was an employee receiving a salary and bonuses. On January 1, 1954 he was admitted as a partner receiving a share of profits of the firm. It was contended on behalf of the Comptroller of Income Tax that on becoming a partner the tax-payer ceased business as an employee and commenced a new trade or profession as a partner. The Board of Review held on the evidence regarding the nature of the work done before and after his entry into partnership that the tax-payer did not cease to carry on his profession as an advocate and solicitor when he became a partner and although there was a change of status there was no change of trade, business, profession, vocation or employment. The Comptroller appealed against the decision of the Board.

Held: (1) when an advocate and solicitor practising in the Courts under a practising certificate changes his status from that of an assistant employed by a firm and becomes a partner in the firm, he has not "commenced to carry on or exercise" a profession or employment when he enters into partnership for he was already exercising that profession or employment before he became a partner; (2) therefore the decision of the Board of Review in this case was correct.

Cases referred to:—

(1) *Davies v. Braithwaite* (1931) 2 K.B. 628.

(2) *Thomas v. Commissioner of Inland Revenue* 24 T.C. 14.

(3) *Hathaway v. Turner* 24 T.C. 92.

(4) *Income Tax Commissioners for City of London v. Gibbs* (1942) A.C. 402; (1942) 1 All E.R. 415.

(5) *Comptroller of Income Tax v. G. B. Roche* (1951) M.L.J. 87; 2 M.L.R. 1.

CIVIL APPEAL.

D. C. Jackson (Sr. Federal Counsel) for the appellant.

F. G. Pooley for the respondent.

Spenser Wilkinson J. : — This is an appeal by the Comptroller of Income Tax against the decision of the Board of Review made on the 1st July, 1955. The facts and the contentions of the parties are concisely set out in the grounds of decision of the Board, a summary of which is as follows :—

The tax-payer was practising as an advocate and solicitor in a legal firm. Up to the 31st December, 1953 he was an employee receiving a salary and bonuses. On the 1st January, 1954 he was admitted as a partner receiving a share of profits of the firm.

It is contended on behalf of the Comptroller that on becoming a partner the tax-payer ceased business as an employee and commenced a new trade or profession as a partner.

On the evidence regarding the nature of the work done before and after his entry into partnership the Committee held that the tax-payer did not cease to carry on his profession as an advocate and solicitor when he became a partner and although there was a change of status there was no change of trade, business, profession, vocation or employment.

The Comptroller relies upon sub-sections (3) and (5) of section 31 of the Income Tax Ordinance, 1947. The relevant part of sub-section (3) reads as follows :—

"(3). The statutory income of any person from any trade, business, profession, vocation, or employment for the year of assessment in which he commenced to carry on or exercise such trade, business, profession, vocation, or employment and for the two following years of assessment (which years are in this subsection respectively referred to as 'the first year', 'the second year', and 'the third year') shall be ascertained in accordance with the following provision....."

The relevant part of sub-section (5) reads as follows :—

"(5) Where a person permanently ceases to carry on or exercise a trade, business, profession, vocation or employment, his statutory income therefrom shall be —

(a) as regards the year of assessment in which the cessation occurs, the amount of the income of that year;

(b) as regards the year of assessment preceding that in which the cessation occurs, the amount of income of